

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D.C.

ORDER NO. 3094

IN THE MATTER OF:

Served November 18, 1987

Application of AMERICAN COACH)
LINES, INC., for a Certificate of)
Public Convenience and Necessity,)
Charter Operations)

Case No. AP-87-20

Application of AMERICAN COACH)
LINES, INC., a District of Columbia)
Corporation, to Acquire Control of)
AMERICAN COACH LINES, INC., a)
Maryland Corporation)

Case No. AP-87-27

By application filed October 1, 1987, American Coach Lines, Inc., a District of Columbia corporation ("ACL-DC"), seeks authority to acquire control of American Coach Lines, Inc., a Maryland corporation ("ACL-MD"). The application is accompanied by a Motion to Dismiss Application for Lack of Jurisdiction, and that must be disposed of prior to treating the application on its merits.

An application of a WMATC carrier to acquire control of a non-WMATC carrier is governed by the Compact, Title II, Article XII, Section 12. In relevant part, Section 12(a) provides

It shall be unlawful, without approval of the Commission in accordance with this section--

(1) for two or more carriers, any one of which operates in the Metropolitan District, to consolidate or merge their properties or franchises, or any part thereof, into one person for the ownership, management, or operation of properties theretofore under separate ownership, management, or operation; or

(2) for any carrier which operates in the Metropolitan District or any person controlling, controlled by, or under common control with, such a carrier (i) to purchase, lease, or contract to operate the properties, or any substantial part thereof, of any carrier which operates in such Metropolitan District, or (ii) to acquire control, through ownership of its stock or otherwise, of any carrier which operates in such Metropolitan District.

It is ACL-DC's position that Section 12 does not confer jurisdiction upon the Commission over any and all mergers of two carriers within the Metropolitan District. As support for this position, ACL-DC relies on the fact that Section 12(a)(1) contains the language ". . . theretofore under separate ownership, management, or operation." According to ACL-DC, this language makes Section 12 inapplicable to its merger because Mr. Frank Sherman owns the stock of both corporations and does not distinguish between the corporations.

Although we agree with petitioner's principle, i.e., that all words of a statute must be given effect when interpreting that statute, we reach a different result and shall deny the motion. In the context of the entire statute, the challenged phrase is intended to broaden the scope of Section 12, not to limit it. A careful reading of the entire statute makes it clear that the language of Section 12 was intended to capture all forms of unification, whether whole or partial, temporary or permanent, equipment-focused or operating authority-focused. It is the counterpart to Section 4(h) of Article XII, Title II of the Compact which requires Commission approval of all transfers. This would include a transfer from an individual to a corporation wholly-owned by that individual. A transfer from one entity to another is a more easily identified occurrence than a joining of two entities. Because unifications can take many forms, Section 12 contains more specific language in an attempt to cover all contingencies. Certainly one contingency is the unification of two corporations, both of which operate in the Metropolitan District and are owned by the same shareholders. ACL-DC would have the Commission adopt the legal error that the corporation and the shareholder are identical. Moreover, we note that even if it were determined that Section 12(a)(1) did not cover the merger of ACL-MD and ACL-DC, Section 12(a)(2) would apply.

In the interest of judicial economy, we shall join this hearing with the hearing to be scheduled pursuant to Order No. 3088, served October 29, 1987.

THEREFORE, IT IS ORDERED:

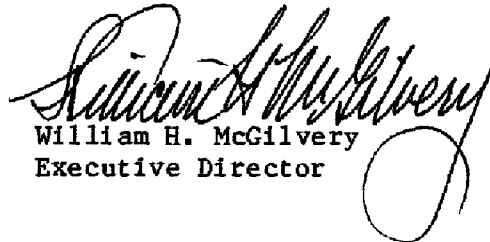
1. That the motion of American Coach Lines, Inc., to dismiss Case No. AP-87-27 is hereby denied.
2. That Case Nos. AP-87-20 and AP-87-27 be joined for the purpose of public hearing.
3. That the above-captioned applications are hereby scheduled for public hearing to commence Thursday, January 21, 1988 at 9:30 a.m. in the Hearing Room of the Commission, Room 314, 1625 I Street, N.W., Washington, D.C. 20006.
4. That American Coach Lines, Inc., a District of Columbia corporation, is hereby directed to publish once, in a newspaper of

general circulation in the Metropolitan District, and to post in each of its vehicles continuously and conspicuously through the date of public hearing, notice of these applications and hearing in the form prescribed by the Commission staff, no later than Friday, December 18,, 1987, and to produce at the hearing affidavits of such publication and posting.

5. That any person desiring to protest shall file a protest in accordance with Commission Rule No. 14, or any person desiring to be heard on either of these matters shall so notify the Commission, in writing, no later than Monday, January 11, 1988, and shall simultaneously serve a copy of said protest or notice on counsel for applicant, Leonard A. Jaskiewicz, Esq., Suite 501, 1730 M Street, N.W. Washington, D.C. 20036.

6. That American Coach Lines, Inc., a District of Columbia corporation, is hereby assessed \$1,000 pursuant to Title II, Article XII, Section 19 of the Compact and directed to deliver said amount to the office of the Commission, Suite 316, 1625 I Street, N.W., Washington, D.C. 20006, no later than Monday, January 11, 1988.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS WORTHY, SCHIFTER, AND SHANNON:


William H. McGilvery
Executive Director